

SENATE BILL NO. 304

INTRODUCED BY R. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A TAX CREDIT TO EMPLOYERS WHO MAKE STUDENT LOAN REPAYMENTS ON BEHALF OF QUALIFIED EMPLOYEES WHO HAVE ATTAINED A DEGREE FROM A MONTANA INSTITUTION OF HIGHER EDUCATION; ALLOWING QUALIFIED EMPLOYEES AN EXCLUSION FROM ADJUSTED GROSS INCOME FOR STUDENT LOAN REPAYMENTS MADE BY AN EMPLOYER; DIRECTING THE DEPARTMENT OF REVENUE TO ADOPT RULES TO ADMINISTER THE TAX CREDIT; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Student loan repayment tax credit. There is a credit against taxes otherwise due under 15-30-103 allowable for making student loan repayments. The credit must be computed and administered as provided in [sections 2 and 3].

NEW SECTION. Section 2. Student loan repayment tax credit -- definitions. As used in [section 3] and this section, the following definitions apply:

(1) "Montana institution of higher education" means:

(a) a unit of the Montana university system provided for in 20-25-201;

(b) a community college district as defined in 20-15-101;

(c) a private college or university located in Montana that offers associate or baccalaureate degrees and that is accredited for that purpose by a national or regional accrediting agency recognized by the board of regents of higher education.

(2) "Student loan" means a student educational loan authorized by 20 U.S.C. 1071, et seq., 20 U.S.C. 1087a, et seq., or 20 U.S.C. 1087aa, et seq.

NEW SECTION. Section 3. Tax credit -- rules. (1) Subject to the conditions of this section, an employer is allowed a tax credit against the taxes otherwise due under 15-30-103 or 15-31-101 for the actual

1 amount of a student loan repayment of principal and interest made by the employer directly to the relevant lender
2 or lenders on behalf of each qualified employee of the employer. The credit allowed under this section applies
3 only to student loans incurred by a qualified employee while attending a Montana institution of higher education.

4 (2) (a) The employer is allowed a credit of up to \$5,000 for each qualified employee for whom the
5 employer makes student loan repayments in the tax year. To qualify for the credit for a qualified employee under
6 this section, the student loan repayment for a qualified employee must be at least \$500 in the tax year.

7 (b) (i) The credit for a student loan repayment made by the employer for a qualified employee may be
8 claimed in the tax year the qualified employee graduates from a Montana institution of higher education and the
9 2 succeeding tax years.

10 (ii) If the employee is not a qualified employee of the employer in the tax year in which the employee
11 graduated, then the credit may be claimed in any tax year of the 3-year period following the year in which the
12 qualified employee graduated.

13 (c) In no case may a credit be claimed by any employer for the same qualified employee for more than
14 3 tax years.

15 (3) For the purposes of this section, a qualified employee is an employee who:

16 (a) has attained an associate or baccalaureate degree from a Montana institution of higher education;

17 (b) is employed by the taxpayer on the last day of the tax year;

18 (c) has been employed by the taxpayer for at least 9 months during the tax year; and

19 (d) has been employed for an average of at least 32 hours a week while employed by the taxpayer during
20 the tax year.

21 (4) The credit allowed under this section for a tax year may not exceed the tax liability imposed by
22 15-30-103 or 15-31-101. A credit may not be refunded if a taxpayer has tax liability less than the amount of the
23 credit.

24 (5) The credit allowed under this section may be used as a carryforward against taxes imposed by
25 15-30-103 or 15-31-101 for the 4 succeeding tax years. The entire amount of the credit not used in the year
26 earned must be carried first to the earliest tax year in which the credit may be applied and then to each
27 succeeding tax year.

28 (6) A corporation, an individual, a small business corporation, as defined in 15-30-1101, a partnership,
29 a limited liability partnership, as defined in 35-10-102, or a limited liability company, as defined in 35-8-102,
30 qualifies for the credit under this section. If the credit is claimed by a small business corporation, a partnership,

1 a limited liability partnership, or a limited liability company, the credit must be attributed to the individual
2 shareholders, partners, members, or managers in the same proportion used to report income or loss for state tax
3 purposes.

4 (7) The taxpayer shall provide to the department, on a form provided by the department, documentation
5 of the amount of the student loan repayment made on behalf of a qualified employee in any tax year for which
6 a credit is claimed under this section and the qualified employee's taxpayer identification number.

7 (8) The credit allowed under this section may not be claimed in a tax year in which any portion of the
8 student loan has been paid on behalf of the qualified employee under a student loan repayment program provided
9 by a state or federal agency or another private entity.

10 (9) If a qualified employee defaults on a student loan for which a credit was claimed by the taxpayer in
11 any tax year, the taxpayer shall repay to the state the total amount of student loan credits claimed for that
12 employee for all tax years.

13 (10) (a) The department shall adopt rules that are necessary to implement and administer [section 1] and
14 this section. In adopting rules, the department shall, in consultation with the Montana guaranteed student loan
15 program and similar entities, develop procedures to monitor student loan repayments made by an employer
16 claiming a credit under this section.

17 (b) The department shall establish rules and procedures to ensure that a credit may not be claimed for
18 any employee for more than 3 tax years regardless of whether the employee is a qualified employee of one or
19 more employers.

20
21 **Section 4.** Section 15-30-111, MCA, is amended to read:

22 **"15-30-111. Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal adjusted gross
23 income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the
24 following:

25 (a) (i) interest received on obligations of another state or territory or county, municipality, district, or other
26 political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana
27 under federal law;

28 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
29 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

30 (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a

1 reduction of Montana income tax liability;

2 (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue
3 Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

4 (d) depreciation or amortization taken on a title plant as defined in 33-25-105;

5 (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the
6 amount recovered reduced the taxpayer's Montana income tax in the year deducted;

7 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of
8 the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution
9 of the same estate or trust for the same tax period; and

10 (g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after
11 December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted
12 gross income.

13 (2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not
14 include the following, which are exempt from taxation under this chapter:

15 (a) (i) all interest income from obligations of the United States government, the state of Montana, or a
16 county, municipality, district, or other political subdivision of the state and any other interest income that is exempt
17 from taxation by Montana under federal law;

18 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
19 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

20 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including
21 \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

22 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income
23 received as defined in 15-30-101;

24 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

25 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
26 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in
27 excess of \$30,000 as shown on the taxpayer's return;

28 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
29 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in
30 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000

1 as shown on their joint return;

2 (d) all Montana income tax refunds or tax refund credits;

3 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

4 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section
5 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January
6 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage,
7 or lodging;

8 (g) all benefits received under the workers' compensation laws;

9 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the
10 employee under federal law;

11 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a
12 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

13 (j) principal and income in a medical care savings account established in accordance with 15-61-201
14 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a
15 dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

16 (k) principal and income in a first-time home buyer savings account established in accordance with
17 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase
18 of a single-family residence;

19 (l) contributions or earnings withdrawn from a family education savings account ~~or earnings withdrawn~~
20 ~~from a family education savings account~~ for qualified higher education expenses, as defined in 15-62-103, of a
21 designated beneficiary;

22 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the
23 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

24 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of
25 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution
26 of the same estate or trust for the same tax period;

27 (o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch
28 risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction
29 is not provided for federal income tax purposes;

30 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant

1 to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and
2 taxpayer meet the filing requirements in 15-30-142.

3 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or
4 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303; and

5 (r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero.

6 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall
7 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as
8 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election
9 is effective.

10 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business
11 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and
12 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and
13 salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries
14 were used to compute the credit. In the case of a partnership or small business corporation, the deduction must
15 be made to determine the amount of income or loss of the partnership or small business corporation.

16 (5) Married taxpayers filing a joint federal return who are required to include part of their social security
17 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal
18 base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement
19 benefits when they file separate Montana income tax returns. The federal base must be split equally on the
20 Montana return.

21 (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section
22 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may
23 claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital
24 loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss
25 must be split equally on each return.

26 (7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and
27 who file separate Montana income tax returns are not required to recompute allowable passive losses according
28 to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal
29 Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must
30 be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(11) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is

the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(12) (a) A taxpayer may exclude the amount of the student loan payment received pursuant to subsection (12)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a student loan payment during the tax year made on the taxpayer's behalf by a student loan repayment program described in subsection (12)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (12)(a), a student loan repayment program includes a federal, state, or qualified private program. A qualified private student loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional.

(13) (a) Subject to subsection (13)(b), a taxpayer may exclude the amount of the student loan repayment made pursuant to [section 1 or 3], not to exceed \$5,000, from the taxpayer's adjusted gross income.

(b) If the taxpayer defaults on the student loan for which the taxpayer received a student loan repayment under [section 1 or 3], any amount excluded under subsection (13)(a) must be included in adjusted gross income in the tax year in which there is a default on the student loan.

(c) If a licensed health care facility claims the credit under [section 1 or 3], the exclusion from adjusted gross income of the student loan repayment made is as provided in this subsection (13). (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

NEW SECTION. Section 5. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [section 1].

(2) [Sections 2 and 3] are intended to be codified as an integral part of Title 15, chapter 31, part 1, and

1 the provisions of Title 15, chapter 31, part 1, apply to [sections 2 and 3].

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3 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

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5 NEW SECTION. **Section 7. Applicability.** (1) [This act] applies retroactively, within the meaning of
6 1-2-109, to individuals attaining degrees after December 31, 2008.

7 (2) [This act] applies to tax years beginning after December 31, 2009.

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